C-SCA-614-2005-Y-2

22nd June 2005

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 614 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHMEDABAD TALUKA CO-OPERATIVESALES PURCHASE UNION LTD. - Petitioner(s)

Versus

APPELLATE AUTHORITY & 2 - Respondent(s)

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Appearance :

MS AVANI S MEHTA for Petitioner No(s).: 1.
RULE SERVED for Respondent No(s).: 1,2.
MR GM JOSHI for Respondent No(s).: 2.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 22/06/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the appellate authority under the Payment of Gratuity Act, 1972, Vadodara dated 23rd September 2004 in Appeal No. 9/2004 in dismissing the same and confirming the order passed by the Controlling Authority under the Payment of Gratuity Act, Nadiad dated 30th October 2003 by which the authority under the said Act has directed the petitioner to pay the amount of gratuity to the respondents.

2. The respondent No.2 was serving with the petitioner Cooperative Society. He was permitted to retire on attaining the age of superannuation, however he was not paid the amount of gratuity and therefore the respondent No.2 approached the Controlling Authority under the Payment of Gratuity Act, 1972 {“the Act” for short] at Nadiad by way of Gratuity Application No. 7 of 2003 and the Controlling Authority by order dated

30th October 2003 directing the petitioner Union to make payment of Rs. 1,54,250 along with 10% interest being the amount of gratuity. Being aggrieved and dissatisfied with the said order the petitioner had preferred Special Civil Application No. 5369 of 2004 which came to be disposed with a direction to the Appellate Authority under the Act to dispose of the Appeal within the period of 3 months and thereafter the Appellate Authority by judgment and order dated 23rd September 2004 has dismissed the said appeal confirming the order passed by the Controlling Authority. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Ms. Avni Mehta, learned advocate appearing on behalf of the petitioner has vehemently submitted that in view of the criminal case pending against the respondent No.2 for misappropriation the petitioner Union has

withheld the amount of gratuity which is permissible under the bye-laws and rules of the petitioner Union, i.e., Cooperative Society and therefore it is submitted that all the authorities below have materially erred in directing the petitioners to pay the amount of gratuity to the respondent No.2.

4. On the other hand, Shri Joshi, learned advocate appearing on behalf of respondent No.2 has vehemently submitted that there is no order passed by the petitioner forfeiting the amount of gratuity and therefore it is not permissible for the petitioner to withhold the amount of gratuity. It is also further submitted that in fact the petitioner was permitted to retire on attaining the age of superannuation and therefore the respondent No.2 is entitled to payment of gratuity and in absence of any order of forfeiture passed by the petitioner, merely on the basis of a complaint filed against the respondent No.2 it is not open for the petitioner to withhold the amount of

gratuity and hence both the authorities have rightly found that the respondent No.2 is entitled to payment of gratuity. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is fairly conceded on behalf of the petitioner by Ms. Avni Mehta that there is no order passed by the petitioner forfeiting the gratuity amount as contemplated under Section 4 of the Payment of Gratuity Act. Under the circumstances, in absence of any order passed by the petitioner forfeiting the amount of gratuity as contemplated under Section 4 of the said Act, it is not open for the petitioner to withhold the amount of gratuity more particularly when during the pendency of the said complaint the respondent No.2 is permitted to retire on attaining the age of superannuation and therefore on being retired the respondent No.2 is entitled to payment of gratuity. As held by the learned Single Judge of this Court in

the case of Gujarat State Fertilizers & Chemicals Limited Vs. Surendra T. Amin, reported in **2004 (3) GLH 752**, gratuity is a valuable right of an employee and cannot be withheld or forfeited without following any procedure or holding any inquiry conclusively holding that the employee concerned is liable for damage or loss etc., and in absence of any inquiry to arrive at such a final order, the order withholding gratuity is illegal.

6. Considering the aforesaid facts and circumstances and more particularly in view of the admitted fact that there is no order passed by the petitioner forfeiting the amount of gratuity, both the authorities below are justified in directing the petitioner to pay the amount of gratuity. For the foregoing reasons there being no substance in the present Special Civil Application, the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith.

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[M.R. Shah, J.]

rmr.

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